IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.22247 of 2007

1. **Rahima Khatoon, Wife of Md. Rafique Alam.**
2. **Md. Rafique Alam, Son of Late Abdullah.**
   Both Resident of Village Samaspur, P.S. Belaganj,District- Gaya.

……...Petitioners.

Versus

State of Bihar. …….. Opposite Party.

For the Petitioners: Mr. N.K. Agrawal, Senior Advocate.
For the State : Mr. Jharkhandi Upadhayay, A.P.P.

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8. 1.10.2008. Heard the learned counsel for the petitioners and the learned A.P.P. for the State.

The two petitioners of whom petitioner no.1 is a dealer under the Public Distribution System and petitioner no.2 who happens to be her husband are sought to be prosecuted under Section 7 of the Essential Commodities Act (hereinafter referred to as "the E.C. Act") in connection with Belaganj P.S. Case No.9 of 2006 for alleged violation of the Bihar Trade Articles (Licences Unification) Order (hereinafter referred to as "the Unification Order").

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This application must succeed on two grounds. Firstly, the so called Unification Order is no more in force and when Unification Order is no more in force , no Orders made under Section 3 of the E.C. Act can be said to have been violated so as to invite prosecution under Section 7 of the E.C. Act.

Secondly, petitioner no.1 happens to be a dealer under the Public Distribution System and in view of protection granted by Section 31(2) of the Bihar Trade Articles(Licenses Unification)

Order, 1984 the P.D.S. dealer cannot be prosecuted since he or she happens to be the agent of the Government and they have been granted protection from prosecution.

Due regard being had to the law in force the prosecution of the petitioners amounts to an absolute abuse of the process of the court and cannot be sustained in the eye of law.

Having given my anxious thoughts to the matter in issue and for the reasons stated above, the impugned order taking cognizance, so far as these petitioners are concerned, is hereby quashed and the application is allowed.

(Abhijit Sinha,J)

P.S.

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